

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 179 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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DHANPALPALNI MANIYAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 179 of 2002
MR RAJESH K SHAH for Petitioner No. 1
Mr A J Desai, APP for Respondent No. 1
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2002

ORAL JUDGEMENT

The present petition under Article 226 of the Constitution of India has been filed by the petitioners above named challenging the FIR being C.R. No.81/2002 registered with Bardoli Prohibition Police Station in

Surat District for offence punishable under section 70 of the Bombay Prohibition Act, 1949 on 10.1.2002 against the present petitioner.

2. The aforesaid FIR was lodged by the Prohibition Task Force at Surat stating that the petitioner herein were found carrying rotten jaggery in a Truck bearing No. TN-27-P-6566 and committed the aforesaid offence. The petitioner has challenged the aforesaid FIR on various grounds. The court had issued notice at the first instance and rule was issued thereafter. In response to the service of notice of rule, Mr A J Desai, learned APP has appeared before the Court. I have heard the learned Advocates for the parties and have perused the papers. The facts are not in dispute. At the same time, it is the contention of the petitioner in the present petition that the goods were in transit and it was not required to be used or consumed in the State of Gujarat. It appears from the record that rotten jaggery was actually in transit and there is no material on record to show that the said jaggery was required to be used or consumed in the State of Gujarat. The said jaggery was seized from border area. Even the application of the petitioner for interim custody of the aforesaid jaggery was allowed and the muddamal rotten jaggery has been entrusted to the petitioner by way of interim order on the grounds stated in the order of the learned Magistrate dated 28.1.2002. It would be relevant to consider that even the Investigating Agency had supported the said statement of the petitioner for entrustment of jaggery to the petitioner by way of interim arrangement. Even the bills were shown to the Investigating Agency in order to show that the aforesaid jaggery was purchased from Tamil Nadu and it was to be delivered in the State of Maharastra. That it was not to be used in the State of Gujarat and it was simply a goods 'in transit' and the goods have been seized from the border area of the State of Gujarat.

3. It is a faact that rotten jaggery was a complicated issue and the Social Welfare Department of the State of Gujarat had issued certain directions for the said purpose. First one is a circular dated 11.7.1995. Another one was issued by the Director General of Police and Inspector General of Police dated 20.1.1995. Another such circular was issued by the said Office dated 17.11.2000. In this connection, even a writ petition was filed and disposed of by this court on 28.11.1986 in Special Criminal Applications No.4 and 5 of 1986. Another Criminal Misc.Applications No.774 and 775 of 1985 were also disposed of by this court by oral order dated 1.7.1985. One more Criminal Misc.Application

No.4763/98 was disposed of by this Court on 27.11.1998. Other such matters were also disposed of by this Court. Last decision appears to be of 10.7.2001 in Criminal Misc.Application No.2170/2001 with other allied criminal Misc.Applications disposed of by this Court. In view of the aforesaid circulars and decisions of this Court, it is very clear that before going for a FIR or a complaint and before such complaint or FIR could be investigated, it was necessary to consider the aforesaid circulars and decisions of this court. This appears to have been omitted in the present matter. At the same time, except the bare statement of the accused that the rotten jaggery seized from the petitioner were not to be used or consumed in Gujarat State, no other material has been collected by the respondents in order to show that the rotten jaggery seized in the present case was actually required to be used or consumed in the State of Gujarat.

4. Having regard to the facts and circumstances and to the Government circulars and the decisions referred to hereinabove, it is found that no offence is made out as the jaggery in question is not shown to be made for use or consumption in the State of Gujarat. Therefore, no offence has been constituted. It would be necessary to intervene in the matter at this stage by exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

5. For the foregoing reasons, this petition is allowed. The FIR being CR No.81/2002 registered at Bardoli Prohibition Police Station at Bardoli in Surat District for the offences punishable under Bombay Prohibition Act, 1949 against the petitioner is ordered to be quashed and set aside. Rule is made absolute accordingly.

5.4.2002 [D P Buch, J.]

msp